CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—SUPERVENING STATUTE.—LEISTON GAS CO. v. LEISTONCUM-SOZIWELL URBAN COUNCIL.—(1916) 1 K. B. 912.—Plaintiffs had contracted to furnish defendants with gas light for street lamps at so much per lamp for a period of five years. During the period, the Defense of the Realm Act was passed prohibiting, until further notice, the lighting of street lamps. Plaintiffs, though not furnishing light, sued the city for the price of gas as agreed. *Held,* recovery of full contract price will be allowed on the ground that plaintiff had been ready at all times to furnish said light service.

Impossibility of performance of a contract will not release either party unless occasioned by some act of the government. 9 *Cyc.* 630; *Bailey v. DeCrespigny,* L. R. 4 Q. B. 180; *Sanner v. Phoenix Ins. Co.,* 41 Mo. App. 480. An exception is laid down, where the act of government is temporary, and holds discharge will not take place where ultimate performance is possible. *Baylies v. Fettyplace,* 7 Mass. 325; *Hadley v. Clark,* 8 T. R. 259. Both these cases deal with embargo laws preventing immediate delivery of cargoes. A distinction can be made between such cases and those calling for a continued performance, such as a contract for light. *Whitfield v. Zellnor,* 24 Miss. 663; *Jones v. Judd,* 4 Comst. (N. Y.) 411; *Williams v. Butler,* 105 N. E. (Ind.) 387. In such cases, recovery is allowed on a *quantum meruit* and not on the original contract. *McClay v. Hedges,* 18 Ia. 66; *Green v. Gilbert,* 21 Wis. 395. To compel payment according to the original contract is to compel the city to pay for something it never received, through no fault of its own. *Stewart v. Loring,* 5 Allen (Mass.) 306; *Woodward v. Town of Rutland,* 61 Vt. 316.

H. N. B.

CORPORATIONS—CORPORATE POWERS—LOANING MONEY.—CALUMET AND CHICAGO CANAL AND DOCK CO. v. CONKLING, 112 N. E. (ILL.) 982.—A company was incorporated to construct a canal, docks, etc., and empowered to purchase real and personal estate and to sell, lease and "employ" it as it should determine. *Held,* the corporation was not thereby authorized to loan money. Carter, Craig and Duncan, JJ., *dissenting.*

While it is true, as a general proposition, that a corporation engaged in an industrial or construction business has no authority to engage in a business of loaning money, it does not follow that it has not the power in the management of its funds to loan them temporarily at interest, when not needed in the prosecution of its business. *Canning Co. v. Stanley,* 133 Ia. 57. As incident to a successful business, a corporation has the implied power to invest its surplus funds to prevent them from being unproductive. *Bank of Berwick v. Vinson Shingle and Mfg. Co.,* 132 La. 861; *Frese v. Mutual Life Ins. Co.,* 11 Cal. App. 387; *North Carolina R. R. Co. v. Moore,* 70 N. C. 6. It may be considered a proper incident to the business of a corporation to dispose of its surplus property by extending financial aid to another in order to attain its object. *Holmes, Booth and Haydens v. Willard,* 125 N. Y. 75; *Union Water Co. v. Murphy's Fluming Co.,* 22 Cal. 620. The weight of authority, though the Illinois courts hold to the contrary, is with the dissenting judges in

the single question in point. But see *Western Telephone Mfg. Co. v. Foley,* 150 Ill. App. 343. The principal case as a whole cannot be reconciled with the court's decision in *Leigh v. American Brake Beam Co.,* 205 Ill. 147.

A. S. B.

EVIDENCE—ADMISSIBILITY OF ORAL AGREEMENT AGAINST WRITTEN CONTRACT.—STEVENS V. INCH, 158 PAC. (KAN.) 43.—In an action by payee on a promissory note which maker had made only after payee had agreed that the note was to be paid by a third party; that the note was a mere form; and that in no event would the maker be liable on it, *held,* that parol evidence of agreement is not admissible in defence to an action on the note.

Extrinsic evidence is not admissible to vary terms of written instrument, *Torpey v. Tebo,* 184 Mass. 307; however, it may be used to show fraud in inception or execution of instrument. *Phoenix Insurance Co. v. Owens,* 81 Mo. App. 201. Parol evidence is admissible to explain a contract or to show that none exists, though instrument on face purports to indicate a binding promise. *Colonial Park Estates v. Massart,* 112 Md. 648. If maker would not have signed without such an agreement being made, a breach of the agreement is a fraud upon him, and parol evidence of agreement is admissible. *Gandy v. Weckerly,* 220 Pa. St. 285. Also where part of the consideration for the giving of the note is the parol agreement, it can be shown by oral evidence. *De Rue v. McIntosh,* 26 S. D. 42; *Dicken v. Morgan,* 54 Ia. 684. The decision in the principal case is distinctly open to question.

F. L. McC.

EVIDENCE—JUDICIAL NOTICE—FEDERAL LEGISLATION PARAMOUNT.—TABER V. MISSOURI PAC. RY. CO., 186 S. W. (MO.) 688.—Deceased, a railroad switchman, while making up a train in the yards at Kansas City, Mo., was negligently run over and killed. Evidence showed that deceased was "making up train No. 53, west-bound train." In a suit under Missouri Employer's Liability Act by a guardian for the minor children of the deceased, *held,* guardian could recover. Graves, J., *dissenting.*

Courts sitting in a particular state or territory have judicial knowledge of the geographical position of its political divisions, such as counties, cities, towns and townships, Wharton, *Evidence,* Sec. 339; *Linck v. City of Litchfield,* 141 Ill. 469; and of their boundaries as prescribed by statute. *Smitha v. Flournoy's Admr.,* 47 Ala. 345; *DeBaker v. So. Cal. R. Co.,* 106 Cal. 257. Judicial notice, therefore, should have been taken of the fact that Kansas City, Mo., is on the Kansas-Missouri state line. *Kansas City, etc., R. Co. v. Burge,* 40 Kan. 736; *Bishop v. Life Ins. Co.,* 85 Mo. App. 302. From the evidence, train No. 53 was a west-bound train, and a train being made up for a point west of Kansas City, Mo., for this reason would necessarily be interstate and not intrastate. Deceased, at the time of the accident, was engaged in interstate commerce. *Zikos v. Or. R. & N. Co.,* 179 Fed. 893; *Colasurdo v. C. R. of N. J.,* 180 Fed. 832. The power of